



March 22, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

C & M Metals Inc.
Don Carlos Monroe
President and Manager
1709 East 24th Street
Los Angeles, CA 90058-1305

C & M Monroe Family LLC
Carlos E. Monroe, Manager
1950 Wellington Road
Los Angeles, CA 90016-1823

Glory Recycling, Inc.
1709 East 24th Street
Los Angeles, CA 90058

VIA U.S. MAIL

Registered Agent for C & M Metals Inc.:
Don Carlos Monroe
1709 East 24th Street
Los Angeles, CA 90058

Registered Agent for C & M Monroe
Family LLC:
Carlos E. Monroe
1950 Wellington Road
Los Angeles, CA 90016

Registered Agent for Glory Recycling,
Inc.:
Todd Monroe
1709 East 24th Street
Los Angeles, CA 90058

**Re: Notice of Violation and Intent to File Suit Under the
Federal Water Pollution Control Act**

To Whom It May Concern:

I am writing on behalf of Santa Monica Baykeeper ("Baykeeper") regarding violations of the Clean Water Act¹ and the State of California's General Industrial Storm

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

Water Permit ("Storm Water Permit")² occurring at the C & M Metals Inc. facility located at 1709 East 24th Street, Los Angeles, California 90058 (hereinafter "C & M Facility" or "Facility"). Information available to Baykeeper indicates that the following companies are the owners and/or operators of the C & M Facility: C & M Metals, Inc., C & M Monroe Family LLC and Glory Recycling, Inc. (collectively referred to as "C & M Owners and/or Operators").³ The owners and/or operators of the Facility have discharged and continue to discharge pollutants unlawfully from the Facility into local waterways. Further, the owners and/or operators of the Facility have engaged and continue to engage in ongoing and continuous violations of the substantive and procedural requirements of the Storm Water Permit. These violations of the Storm Water Permit are violations of the Clean Water Act. *See* 40 C.F.R. § 122.41(a) ("Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action."). The Clean Water Act provides that owners and/or operators are liable and subject to civil penalties for violations of its provisions. 40 C.F.R. § 122.41(b). As explained below, the owners and/or operators of the Facility are liable and subject to civil penalties for violating the Storm Water Permit and the Clean Water Act.

Section 505(a) of the Clean Water Act authorizes citizen suits "against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this Act or . . . an order issued . . . with respect to such a standard or limitation." 33 U.S.C. § 1365 (a)(1). A citizen must provide notice of the alleged violation(s) and his/her intent to sue at least sixty (60) days prior to initiating a civil action under Section 505(a) of the Clean Water Act. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the executive officer of the water pollution control agency in the state in which the alleged violation occurred, and, if the alleged violator is a corporation, to the registered agent of the corporation. *See* 40 C.F.R. § 135.2.

Baykeeper submits this letter to you as the registered agent, responsible owners, officers, and/or operators of C & M Metals Inc., C & M Monroe Family LLC and Glory Recycling, Inc. By this letter Baykeeper hereby puts the owners and/or operators of the C & M Facility on notice that after the expiration of sixty (60) days from the date of this letter, Baykeeper intends to file an enforcement action in Federal court against the owners and/or operators of the Facility for violating the Storm Water Permit and the Clean Water Act.

I. Background

A. Santa Monica Baykeeper

² National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

³ The owners and/or operators of the Facility are identified in greater detail in Section I.B below and referred to hereinafter as "C & M Owners and/or Operators."

Santa Monica Baykeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, CA 90401. Founded in 1993, Baykeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles area. Baykeeper is dedicated to the preservation, protection, and defense of the rivers, creeks and coastal waters of Los Angeles County from all sources of pollution and degradation. To further this mission, Baykeeper actively seeks federal and state implementation of the Clean Water Act. Where necessary, Baykeeper directly initiates enforcement actions on behalf of itself and its members.

Members of Baykeeper reside in Los Angeles County, near Ballona Creek, the Ballona Creek Estuary, and the Santa Monica Bay. As explained in detail below, the C & M Owners and/or Operators have continuously discharged pollutants into Ballona Creek, the Ballona Creek Estuary and the Pacific Ocean in violation of the Clean Water Act and the Storm Water Permit. Baykeeper members use these waters to fish, surf, swim, sail, SCUBA dive and kayak. Additionally, Baykeeper members use these waters to view wildlife, and engage in scientific study through pollution and habitat monitoring and restoration activities, including Baykeeper's Kelp Restoration Project, Marine Protected Areas Watch Project, and Drain Watch Program. Baykeeper members also use the path along Ballona Creek and Ballona Creek Estuary to bike, walk and run. The unlawful discharge of pollutants from the C & M Facility into Ballona Creek, Ballona Creek Estuary and the Pacific Ocean impairs Baykeeper members' use and enjoyment of these waters. Thus, the interests of Santa Monica Baykeeper's members have been, are being and will continue to be adversely affected by C & M Owners and/or Operators' failure to comply with the Clean Water Act and the Storm Water Permit.

B. The C & M Owners and/or Operators

Information available to Baykeeper indicates that C & M Metals Inc. and C & M Monroe Family LLC own and/or operate the C & M Facility located at 1709 East 24th Street, Los Angeles, California 90058. Information available to Baykeeper indicates that Mr. Don Carlos Monroe and Mr. Carlos E. Monroe are the Presidents of C & M Metals Inc. and that Mr. Don Carlos Monroe is the Manager of C & M Metals, Inc. Mr. Don Carlos Monroe also serves as the registered agent of C & M Metals Inc, located at 1709 E. 24th Street, Los Angeles, CA 90058. Mr. Carlos E. Monroe is the registered agent for C & M Monroe Family LLC, located at 1950 Wellington Road, Los Angeles, CA 90016. Information available to the Baykeeper further indicates that Glory Recycling, Inc. also conducts scrap metal recycling activities at the C & M Facility located at 1709 East 24th Street, Los Angeles, CA 90058. The registered agent for Glory Recycling, Inc. is Mr. Todd Monroe.

Information available to Baykeeper indicates that the C & M Facility is between 1.5 and 2 acres in size.⁴ The C & M Owners and/or Operators obtained coverage under the Storm Water Permit in 1992 by submitting a Notice of Intent ("NOI"). The Facility's NOI lists its Standard Industrial Classification code of regulated activity ("SIC Code") as 5093 (processing, reclaiming, and wholesale distribution of scrap metal and waste materials).⁵ The Storm Water Permit regulates the storm water discharges from the C & M Facility associated with this industrial activity. Storm Water Permit, Attachment 1 at 2.

C. Storm Water Pollution, Ballona Creek, Ballona Creek Estuary, and the Pacific Ocean

With every significant rainfall event, millions of gallons of polluted rainwater, originating from numerous Los Angeles industrial operations such as the C & M Facility, pour into storm drains and Los Angeles area surface waters. The consensus among regulatory agencies and water quality experts is that storm water pollution accounts for more than half of the total pollution entering marine and river environments annually. According to the National Research Council's "Report on Urban Storm Water," storm water runoff is "a principal contributor to water quality impairments of water bodies nationwide."⁶ This discharge of pollutants from industrial facilities in storm water contributes to the impairment of downstream waters and aquatic dependent wildlife. A water body is impaired if it is unable to support its beneficial uses, as described below.

Information available to Baykeeper indicates that the C & M Facility is about 10 miles to the north east of Ballona Creek. Information available to Baykeeper further indicates that storm water flows from the C & M Facility enter the municipal storm drain system via inlets located on East 24th Street, 23rd Street and Long Beach Boulevard, and then are carried by the municipal storm drains to the southwest until they reach and discharge into Ballona Creek close to the intersection of South La Cienega Blvd and Fairfax Avenue in Los Angeles. *See also* Section II *infra*. Ballona Creek Estuary is located at the terminus of Ballona Creek, about 8 miles to the west of the intersection between South La Cienega Blvd and Fairfax Avenue.

The Los Angeles Regional Water Quality Control Board ("Regional Board")'s Water Quality Control Plan for the Los Angeles and Ventura County Watersheds ("Basin Plan") lists the Beneficial Uses for waters in the Ballona Creek Watershed. The Beneficial Uses for the waters that receive polluted storm water discharges from the Facility include: water contact recreation (REC 1), non-contact water recreation (REC 2), municipal and domestic supply (MUN), commercial and sport fishing (COMM), warm

⁴ See C & M Metals Storm Water Pollution Prevention Plan (2001) (describing the C & M Facility as 1.5 acres); *See also* State of California State Water Resources Control Board Notice of Intent for General Permit to Discharge Storm Water Associated with Industrial Activity (WQ Order No. 91-13-DWQ) ("Notice of Intent to Discharge") (describing the C & M Facility as 2 acres).

⁵ Notice of Intent to Discharge, *supra* n.4, at 1.

⁶ National Research Council of the National Academies. *Urban Stormwater Management in the United States*. at vii. (2008).

freshwater habitat (WARM), wildlife habitat (WILD), and estuarine habitat (EST), rare, threatened, or endangered (RARE), migration of aquatic organisms (MIGR), spawning, reproduction and/or early development (SPWN), shellfish harvesting (SHELL), and marine habitat (MAR). See Basin Plan, Table 2-1. Ballona Creek is listed as impaired by at least three of the pollutants the C & M Owners and/or Operators discharge from the Facility in quantities that have exceeded, and continue to exceed, Storm Water Permit limits: copper, lead and zinc. Ballona Creek Estuary is similarly listed as impaired by at least four of the pollutants discharged by the C & M Facility: cadmium, copper, zinc and lead. Polluted discharges from the C & M Facility into area storm drains cause and/or contribute to the impairment of water quality in Ballona Creek and Ballona Estuary. In addition, these pollutants eventually discharge to the Pacific Ocean via Ballona Creek and the Ballona Creek Estuary. For the Los Angeles area aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Facility, must be eliminated.

II. The C & M Facility and the Associated Discharge of Pollutants

Information available to Baykeeper indicates ongoing and continuous violations of the Storm Water Permit at the C & M Facility. Violations of the Storm Water Permit are also violations of the Clean Water Act.

Documents submitted by C & M Owners and/or Operators demonstrate that the Facility includes a yard, office, storage areas, truck scale, a small house/storage building, and a hazardous material storage building. C & M Owners and/or Operators' Storm Water Pollution Prevention Plan ("SWPPP"), NOI and website indicate that the C & M Owners and/or Operators engage in the following industrial operations: the trading and brokerage of ferrous and non-ferrous metals; the storage and recycling of scrap metal from automotive repair centers, electronics manufacturers, machine shops, medical facilities, muffler shops, plumbers, radiator repair centers and wheel and tire centers; collecting, handling, sorting, baler-compacting, shearing, crushing, torching, shredding and plasma cutting of scrap metals; loading, packaging, shipping and transportation of scrap metals; pick-ups and deliveries using C & M Owners and/or Operators trucks; vehicle and equipment maintenance; and certified destruction services. The materials recycled by the C & M Owners and/or Operators at the Facility include batteries, light bulbs, lancets, needles, radiators, wire cable, X-ray film, automobile wheels, bumpers, pistons, bearings, and computer products or e-waste such as hardware towers, PCBs, hard drives, and keyboards. The C & M Owners and/or Operators also store, handle, and/or transport hazardous waste such as waste oil and waste gasoline.

Sources of pollutants associated with the industrial activities at the C & M Facility include, but are not limited to: the outdoor scrap storage areas; the scrap processing areas, such as the baler, plasma cutter, welders and shearing equipment; the vehicle and equipment maintenance areas; the parking areas; the battery storage and disposal area; the truck bins and boxed scrap areas; the loading and unloading areas; the loose piles with ferrous and non-ferrous scrap; the shipping and receiving areas; the baled

scrap storage areas; the radiators, insulated wire, brass and oily scrap storage areas; the truck scales; and the on-site material handling equipment such as forklifts, carts, trucks, dumpsters and bins. The pollutants associated with the Facility's operations include, but are not limited to: toxic heavy metals such as zinc, copper, lead, cadmium, arsenic, aluminum, iron, mercury, nickel, silver, barium, and chromium; gas, diesel, oil, grease and lubricants; PCBs; hydraulic fluids, and heavy metals; fuel and fuel additives; brake fluids, transmission fluids and battery fluids; total suspended solids ("TSS"); pH-affecting substances; and fugitive and other dust, dirt and debris.⁷

Visual observations conducted by Baykeeper indicate that the C & M Facility is surrounded by a fence and includes several small buildings and a large open area. Baykeeper's investigations also confirm that the C & M Owners and/or Operators conduct scrap recycling operations and store materials at the Facility without adequate cover, thereby exposing pollutants associated with their industrial activities to precipitation, which carries away these pollutants as storm water flows into Los Angeles area creeks, rivers and the Pacific Ocean. Documents provided by the C & M Owners and/or Operators indicate that the surface of the Facility is between 75% and 90% impervious.⁸

Apart from the small buildings, the majority of the C & M Facility site has no roof or other covering. Baykeeper has observed that the C & M Owners and/or Operators store scrap metal and other materials in large piles placed directly on the ground within the C & M Facility's open area without any covering or containment, thereby exposing pollutants associated with their industrial activities to storm water flows. These piles are located near driveways leading into and out of the Facility onto 24th Street, and appear to be at least 15-20 feet high. Baykeeper's observations indicate that these piles consist of, but are not limited to, scrap automotive parts, aluminum, crushed vehicles, and appliances such as used refrigerators, air conditioners, and stoves. Baykeeper has also observed that the C & M Owners and/or Operators store scrap metal and other materials in large, uncovered bins with no secondary containment. These uncontained and uncovered bins filled with scrap metal and waste material are also located at, near and/or directly adjacent to drainage areas at the C & M Facility.

Baykeeper investigators have also observed that dirt, oil, grease, dust, and other pollutants cover the floor of the operations area. These pollutants have been and continue to be tracked throughout the Facility and off-site by trucks and other vehicles leaving the Facility via the driveway and are thus carried to 24th Street, Long Beach Blvd and other streets surrounding the Facility.

The failure to properly address these pollutant sources results in contaminated flows generated by the Facility during rain events and discharged from its outfalls, into

⁷ See NPDES Storm Water Multi-Sector General Permit for Industrial Activities ("Multi-Sector Permit"), Tables N-1, N-2, N-3, and N-4; *see also* 65 Fed. Reg. 64839 (2000).

⁸ See Notice of Intent, *supra* n.5, at 2 (describing the facility as 75% impervious); *See also* SWPPP at 6 (describing the facility as 90% impervious).

the municipal storm sewer system and ultimately into Ballona Creek, Ballona Creek Estuary and the Pacific Ocean.

Documents submitted to the Regional Board by the C & M Owners and/or Operators indicate that the Facility has four outfalls discharging storm water from the four drainage areas at the site.⁹ The outfall for Drainage Area 1 is located at the southern side of the Facility, by the office building, and discharges to 24th Street. Outfall 2, which drains Drainage Area 2, is at the large gate leading to the truck scale and similarly discharges to 24th Street. Outfall 3, draining Drainage Area 3, is located at the western side of the Facility, at Long Beach Boulevard. The fourth outfall is at the northern boundary of the Facility. This outfall drains Drainage Area 4 and discharges to 23rd Street. All four outfalls are located in close proximity to municipal storm drain inlets and catch basins located on Long Beach Boulevard, 23rd Street and 24th Street.¹⁰

Baykeeper's visual observations and investigations reveal that during rain storm events polluted stormwater flows from at least two of the Facility's outfalls directly into these municipal storm drain inlets and catch basins. Discharges from Outfall 1 flow by the office building and under the fence surrounding the facility, then flow west on 24th Street. Discharges from Outfall 2 flow down the driveway and entrance to the facility and then flow west on 24th Street until they discharge to a storm drain inlet located on 24th Street near the northeast corner with Long Beach Boulevard and enter the same municipal storm drain inlet as the discharges from Outfall 1. Based on the location of Outfall 3 in relation to municipal storm drain inlets, discharges from Outfall 3 flow under the fence on the western side of the Facility and then travel south onto Long Beach Boulevard where they would enter a municipal storm drain inlet on Long Beach Boulevard, near the northeast corner with 24th Street. Similarly, based on the location of Outfall 4 in relation to municipal storm drain inlets, discharges from Outfall 4 exit the Facility at the driveway on the northern boundary of the Facility where they would flow west down 23rd Street until they reach a municipal storm drain inlet at 23rd Street, near the southeast corner with Long Beach Boulevard. Information available to Baykeeper indicates that these area storm drain inlets discharge to municipal storm sewers, which convey storm water flows to Ballona Creek, Ballona Creek Estuary and the Pacific Ocean.

Baykeeper's visual observations of the Facility also indicate that the C & M Owners and/or Operators have not properly developed and/or installed best management practices ("BMPs") at the Facility sufficient to prevent the exposure of pollutants associated with the Facility's industrial operations to storm water and non-storm water, and further, have not properly developed and/or installed BMPs sufficient to prevent the discharge of these pollutants from the Facility during rainstorm events. Consequently, during rain events storm water carries pollutants from the uncovered operations areas, uncovered scrap piles, ground and floor contaminants, equipment, staging areas, shipping

⁹ *Id.*

¹⁰ *Id.*

and receiving areas, and other sources directly onto 24th Street, 23rd Street and Long Beach Boulevard and into area storm drains. Moreover, visual observations by and information available to Baykeeper indicate that pollutants such as trash and debris are conveyed by storm water from the Facility out of the Facility's discharge points without BMPs to prevent trash and debris from entering area storm drains and in turn Ballona Creek, Ballona Creek Estuary and eventually the Pacific Ocean. These illegal discharges degrade the beneficial uses of Ballona Creek, Ballona Creek Estuary and the Pacific Ocean and negatively impact Baykeeper's members' use and enjoyment of these waters.

The evidence from visual observations, storm water sample results, and investigations conducted by Baykeeper demonstrate that the C & M Owners and/or Operators have violated and continue to violate the Clean Water Act and the Storm Water Permit. As specifically explained in Section III.A below, information available to Baykeeper indicates that C & M Owners and/or Operators have failed to adequately address all industrial activities taking place at the Facility. As explained in Section III.B below, samples of storm water discharges from the Facility demonstrate pollutant concentrations above applicable Water Quality Standards, in violation of Receiving Water Limitations C(1) and C(2) of the Storm Water Permit. As explained in Section III.C below, samples of storm water discharges from the Facility, photographs, and observations of failed BMPs at the Facility demonstrate the C & M Owners and/or Operators' failure to develop and/or implement BMPs that achieve best available technology ("BAT") and best conventional technology ("BCT") under Effluent Limitation B(3) of the Storm Water Permit. Additionally, as explained in Section III.D below, the C & M Owners and/or Operators have failed to develop and/or implement an adequate SWPPP that incorporates site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Finally, as explained in Sections III.E and III.F below, the C & M Owners and/or Operators have failed to develop and/or implement an adequate companion Monitoring and Reporting Program ("MRP") for the Facility. These failures to comply with the Facility's Storm Water Permit, and the resulting discharges of pollutants from the C & M Facility, are violations of the Facility's Storm Water Permit and the Clean Water Act. Perhaps more importantly, these failures have resulted in and continue to contribute to the degradation of Ballona Creek, Ballona Creek Estuary, and ultimately, the Pacific Ocean, while threatening and harming a diverse array of wildlife and threatened and endangered species.

III. Violations of the Clean Water Act and the Storm Water Permit

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. *See* 33 U.S.C. § 1311(a). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); Storm Water Permit, Fact Sheet p. VII. A failure to comply with or obtain coverage under the Storm Water Permit is a violation of the Clean Water Act. *See* 40 C.F.R. § 122.41(a); Storm Water Permit, Section C(1).

As explained further below, information available to Baykeeper indicates that the C & M Owners and/or Operators have failed and continue to fail to comply with the substantive and procedural provisions of the Storm Water Permit. Baykeeper places the C & M Owners and/or Operators on notice of their violations of the Storm Water Permit and the Clean Water Act for each day of violation occurring at the Facility from March 22, 2007 to the present.

A. C & M Owners and/or Operators Coverage Under the Storm Water Permit

To obtain authorization for continued and future storm water discharges associated with industrial activity under the Storm Water Permit, each facility operator must submit an NOI. Storm Water Permit, Fact Sheet, p. II. The Storm Water Permit requires that a facility operator submit an NOI for each industrial facility that is required by EPA regulations to obtain a permit. *See* Storm Water Permit, Provisions E(1-3); Attachment 3, NOI Instructions.

The Permit also requires facility operators to submit "Facility Site Information" in the NOI. *See* Storm Water Permit, Attachment 3 at 3. "Facility Site Information" must include the Standard Industrial Classification ("SIC") code identifying the industrial activities taking place at the facility. *Id.* Scrap metal recycling facilities are classified as SIC 5093, which is the code identified on C & M Owners and/or Operators' NOI. However, a facility must include all activities that take place at a facility on the Facility Site Information. *Id.* Information available to Baykeeper indicates that C & M Owners and/or Operators conduct scrap metal storage and processing as well as other industrial activities that require coverage under the Storm Water Permit. For example, information indicates that C & M Owners and/or Operators also conduct hazardous waste treatment, storage, and/or disposal – classified as SIC Code 4953. *See* Storm Water Permit, Table D at 43; NOI at 2. C & M Owners and/or Operators, however, have failed to amend the NOI as required by the Storm Water Permit, Attachment 3 at 2, and have failed to include this additional industrial activity in the existing SWPPP and MRP. As explained in Sections III.D and III.E below, the C & M Owners and/or Operators are thus in violation of the Storm Water Permit and the Clean Water Act for failing to comply with the substantive requirements of the SWPPP and the MRP in Sections A & B of the Storm Water Permit.

B. Discharges of Contaminated Storm Water in Violation of the Storm Water Permit's Receiving Water Limitations

The C & M Owners and/or Operators have violated the Storm Water Permit's receiving water limitations. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges and authorized non-stormwater discharges from adversely impacting human health or the environment. Storm Water Permit at 4. Discharges containing heavy metals such as copper, lead, and zinc can be acutely toxic and/or have sub-lethal effects on aquatic life in Ballona Creek, the Ballona Creek Estuary and the Pacific Ocean. *See* Final Staff Report for the Total Maximum Daily Load for

Metals in Ballona Creek (July 7, 2005) at 8-9. Thus, discharges that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit and the Clean Water Act.

Receiving Water Limitation (C)(2) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges which cause or contribute to an exceedance of any Water Quality Standards, such as CTR criteria or the applicable Basin Plan Water Quality Standards.¹¹ Storm Water Permit at 4. Because the CTR criteria are Water Quality Standards for the purposes of Receiving Water Limitation C(2), exceedances of CTR criteria are violations of Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act.

The storm water sampling data collected by the C & M Owners and/or Operators and reported in their Annual Stormwater Monitoring Reports ("Annual Reports") to the Regional Board for the 2009-10 wet season, and additional sampling data available to Baykeeper, consistently document discharges at levels that both exceed Water Quality Standards and are known to adversely impact aquatic life in violation of the Storm Water Permit and the Clean Water Act. For example, C & M Owners and/or Operators reported in the 2009-10 wet season that samples of stormwater discharges taken on 5 February 2010 at discharge location "outfall 1" evidence copper at 0.409 mg/L, or more than 30 times the CTR limit; lead at .196 mg/L, more than three times the CTR limit; and zinc at 1.72 mg/L, more than 14 times the CTR limit. The Facility's pollution problems are long term, as illustrated by the sampling data in the 2005-06 Annual Report, which reveals similarly serious exceedances of CTR and EPA Benchmarks at Outfalls 1, 2, and 4 during the 2005-2006 wet season. According to C & M Owners and/or Operators' SWPPP and Baykeeper's visual observations, there have been no changes to BMPs since at least 2001. Thus, discharges containing equivalent concentrations of these reported pollutants have occurred since 2001.

Storm water discharge samples collected by Baykeeper at the Facility on February 16, 2011, November 20, 2011 and January 21, 2012 demonstrate that the Facility continues to discharge polluted stormwater in violation of the CTR limits for copper, lead, zinc, and cadmium and at levels known to negatively impact aquatic life. Storm water discharge samples collected on February 16, 2011 reveal that copper was at 0.52 mg/L or 40 times the CTR limit; cadmium was at 0.027 mg/L or more than 6 times the CTR limit; lead was at 0.28 mg/L or more than 4 times the CTR limit; and zinc was at 1.3 mg/L or more than 10 times the CTR limit. The storm water discharge samples collected by Baykeeper on November 20, 2011 reveal similar pollutant levels in the storm water discharges from the C & M Facility: copper was at 0.50 mg/L or 38 times the CTR limit; cadmium was at 0.012 mg/L or more than 2 times the CTR limit; zinc was at 1 mg/L or

¹¹ Water Quality Standards are pollutant concentration levels determined by the State Water Resources Control Board and the EPA to be protective of the Beneficial Uses of the receiving waters. Discharges above Water Quality Standards contribute to the impairment of the receiving waters' Beneficial Uses. Applicable Water Quality Standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38("CTR").

more than 8 times the CTR limit; and lead was at 0.12 mg/L or nearly two times the CTR limit. The January 21, 2012 storm water discharge samples collected by Baykeeper again show that the C & M Facility stormwater discharges exceeded CTR levels. Specifically, the cadmium levels were at 0.016 mg/L or nearly four times the CTR limit; zinc was at 0.31 mg/L or more than 2.5 times the CTR limit; copper was 0.28 mg/L or more than 21 times the CTR limit; and lead was at 0.050 mg/L, also well above the CTR limit.

The storm water discharge samples reported by C & M Owners and/or Operators in the 2009-2010 Annual Report and the samples collected by Baykeeper in February and November 2011 and January 2012 demonstrate that the Facility discharges at levels known to have negative impacts on aquatic life and the environment.

Accordingly, information available to Baykeeper indicates that the C & M Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of Receiving Water Limitations (C)(1) and C(2) during every significant rain event occurring since at least March 22, 2007. *See* Exhibit A.¹²

Every day that the C & M Owners and/or Operators continue to discharge polluted storm water from the Facility in violation of the Receiving Water Limitations of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).¹³ These violations are ongoing and will continue each day contaminated storm water is discharged from the C & M Metals Facility in violation of the requirements of the Storm Water Permit. Baykeeper will include additional violations when information becomes available. The C & M Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since at least March 22, 2007.

C. Failure to Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology

As explained below, the C & M Owners and/or Operators have violated the Storm Water Permit's effluent limitation (B)(3). Effluent Limitation (B)(3) requires facility operators to "reduce or prevent pollutants associated with industrial activity" through: (1) the implementation of the best available technology economically achievable ("BAT") for toxic and non-conventional pollutants; and (2) the best conventional pollutant control technology ("BCT") for conventional pollutants." Storm Water Permit at 4. Conventional pollutants include TSS, oil and grease ("O&G"), pH, biological oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are

¹² Attached as Exhibit A is a table that sets forth significant rain events (defined by EPA as rainfall events generating rainfall of 0.1 inches or more) that have occurred at the Facility in the past five (5) years, resulting in polluted storm water discharges into area receiving waters. Exhibit A was created using rain data collected at the 716 Los Angeles-Ducommun St. rain gauge by Los Angeles County Department of Public Works.

¹³ *See* Exhibit A.

either toxic, such as cadmium, copper, lead or zinc, or nonconventional. *Id.*; 40 C.F.R. § 401.15.

A facility may demonstrate compliance with Effluent Limitation (B)(3) if it develops and implements a SWPPP “that complies with the requirements of Section A of the [Storm Water Permit] and that includes BMPs that achieve BAT/BCT.” Storm Water Permit at 4. In order to determine whether a facility has successfully developed and implemented BMPs that meet BAT and BCT, EPA established Benchmark pollutant concentration levels in its Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (hereinafter “Multi-Sector General Permit”).¹⁴ The range of BAT for an industrial category “should, *at a minimum*, be established with reference to the *best performer* in any industrial category.” *American Paper Institute*, 543 F.2d 328, 346 (D.C. Cir. 1976) (emphasis added). The BCT standard consists of measures that “will directly - not just incidentally - reduce [the relevant pollutant] and do so better than any other pollutant control technology.” *Waterkeeper Alliance, Inc. v. United States EPA*, 399 F.3d 486, 519 (2d Cir. 2005). Sampling data showing that EPA Benchmarks were exceeded is evidence that a scrap metal facility has failed to implement BMPs that achieve the BAT/BCT standard. See *Santa Monica Baykeeper v. Kramer Metals, Inc.*, 619 F.Supp.2d 914, 925 (C. D. Cal. 2009). Such data combined with a facility’s failure to implement BMPs that meet the industry-wide BAT/ BCT standards establish a clear violation of the Permit’s Effluent Limitation (B)(3). *Id.*

Storm water samples collected by the C & M Owners and/or Operators and by Baykeeper demonstrate that stormwater discharged from the C & M Facility contains pollutants in excess of the EPA Benchmarks for copper, zinc, iron, lead and aluminum. For example, the C & M Owners and/or Operators reported in the 2009-10 wet season that samples of stormwater discharges taken on February 5, 2010 at “Outfall 1” contained copper at 0.409 mg/L; lead at 0.196 mg/L; zinc at 1.72 mg/L; aluminum at 3.69 mg/L; iron at 7.95 mg/L; and Chemical Oxygen Demand (“COD”) at 210 mg/L. These levels clearly and significantly exceed the EPA Benchmark limits for scrap metal recycling facilities. See Multi-Sector General Permit at 102. The Facility’s storm water pollution problems are long term and persistent, as illustrated by the 2005-06 Annual Report, which reveals similar exceedances of EPA Benchmarks at Outfalls 1, 2, and 4.

Moreover, storm water discharge samples collected by Baykeeper at the C & M Facility on February 16, 2011, November 20, 2011 and January 21, 2012 demonstrate exceedances of the EPA Benchmark concentration levels. Baykeeper’s February 16, 2011 sample revealed the following pollutant levels in the storm water discharged from the C & M Facility: copper at 0.52 mg/L, lead at 0.28 mg/L, iron at 8 mg/L and zinc at 1.3 mg/L. All of these constituents significantly exceed the 2008 EPA Benchmark levels for scrap metal recycling industries, SIC 5093. See Multi-Sector General Permit at 102. Baykeeper’s November 20, 2011 sample demonstrated similar EPA Benchmark

¹⁴ See Multi-Sector General Permit (2008), Fact Sheet, p. 106; see also, 73 Federal Register 56572, 56574, 56576.

exceedances with aluminum at 0.76 mg/L, copper at 0.50 mg/L, iron at 1.5 mg/L, lead at 0.12 mg/L, and zinc at 1.0 mg/L. *Id.* The sample collected by Baykeeper on January 21, 2012 also revealed exceedances of EPA Benchmarks with zinc at 0.31 mg/L, lead at 0.050 mg/L and cadmium at 0.016 mg/L. *Id.*

These repeated and significant exceedances of EPA Benchmarks are evidence that the C & M Owners and/or Operators have not developed and implemented BMPs at the Facility that achieve BAT/BCT. Despite the failure of their existing BMPs demonstrated by the significant exceedances of EPA Benchmarks in their own sampling data from February 2010, the C & M Owners and/or Operators have failed to modify the Facility's SWPPP to incorporate any structural BMPs to meet BAT/BCT standards. *See* C & M Metals' SWPPP, R1 (BMP Summary Table).

Accordingly, C & M Owners and/or Operators' failure to revise their SWPPP to incorporate and implement any structural BMPs despite the EPA Benchmark exceedances revealed by C & M Owners and/or Operators' own storm water discharge sampling and despite the continuing exceedances of EPA Benchmark concentrations established by Baykeeper's sampling, demonstrate that the C & M Owners and/or Operators have failed and continue to fail to develop and/or implement adequate BMPs to prevent the exposure of pollutants to storm water and to prevent the discharge of polluted storm water from the Facility. This information indicates that the Facility's BMPs do not meet BAT for toxic pollutants and BCT for conventional pollutants based on industry-wide standards. Thus, the C & M Owners and/or Operators have violated and continue to be in violation of Effluent Limitation (B)(3) of the Storm Water Permit.

Every day that the C & M Owners and/or Operators operate the Facility with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements in the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the C & M Owners and/or Operators will continue to violate the Permit and the Act every day storm water is discharged in violation of the requirements of the Storm Water Permit. Baykeeper will include additional violations when information becomes available. The C & M Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since at least March 22, 2007.

D. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan (SWPPP)

The C & M Owners and/or Operators have failed to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP") as required by Section A of the Storm Water Permit. Section A(1) and Provision E(2) of the Storm Water Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The Storm Water Permit's SWPPP requirement has two objectives: (1) to

examine and identify potential sources of polluted storm water discharge from the Facility; and (2) to develop and implement facility specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Storm Water Permit, Section A(2). To ensure its effectiveness, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9), and must be revised as necessary to ensure compliance with the Storm Water Permit. *Id.*, Sections A(9), A(10).

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Section A(6)). Sections A(7) and (8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

The C & M Owners and/or Operators have not developed and/or implemented a SWPPP that meets the requirements of the Storm Water Permit. For example, the C & M Owners and/or Operators have failed to develop an adequate site map as required by Section A(4) of the Storm Water Permit. Further, information available to Baykeeper indicates that C & M Owners and/or Operators have failed to identify and assess all industrial activities and pollutants at the C & M Facility as required by Sections A(6) and A(7) of the Storm Water Permit. Additionally, the C & M Owners and/or Operators have failed to include in the SWPPP an adequate narrative description of the BMPs implemented at the C & M Facility and discussion of the effectiveness of each BMP to reduce or prevent pollutants in storm water discharges in violation of Section A(8) of the Storm Water Permit. Finally, C & M Owners and/or Operators have failed and continue to fail to develop and/or implement adequate BMPs to prevent the discharge of polluted storm water. Pollutants detected in excess of applicable Water Quality Standards and EPA Benchmarks demonstrate the failure of BMPs at the Facility. Nevertheless, despite continuing violations of the Storm Water Permit, information available to Baykeeper indicates that the C & M Owners and/or Operators have not revised the SWPPP as necessary to ensure compliance with the Permit, in violation of Section A(9) and A(10) of the Storm Water Permit.

Every day the C & M Owners and/or Operators operate the C & M Facility with an inadequately developed and/or implemented SWPPP constitutes a violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C § 1311(a). The C & M Owners and/or Operators have therefore been in daily and continuous violation of

the Storm Water Permit's SWPPP requirements every day since at least March 22, 2007. These violations are ongoing and the C & M Owners and/or Operators will continue to be in violation every day that they fail to revise, develop and implement an adequate SWPPP for the C & M Facility. Baykeeper will include additional violations when information becomes available. The C & M Owners and/or Operators are subject to civil penalties for all violations of the Storm Water Permit and the Clean Water Act since at least March 22, 2007.

E. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate MRP by 1 October 1992 or prior to the commencement of industrial activities at a facility. The objective of the MRP requirement is to: "(1) demonstrate compliance with the Storm Water Permit; (2) aid in the implementation of the SWPPP; and (3) measure the effectiveness of the BMPs in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges." Storm Water Permit at x. The MRP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and that they are evaluated and revised whenever appropriate. *Id.*, Section B(2).

Sections B(3) through B(16) of the Storm Water Permit set forth the MRP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly dry season visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the wet season (defined as October 1-May 30). Sections B(3) and (4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. Storm Water Permit, Sections B(3) and (4). Finally, dischargers must revise the SWPPP to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4).

Sections B(5) and (7) of the Storm Water Permit require dischargers to visually observe and collect samples of storm water discharges from all locations where storm water is discharged. The Storm Water Permit allows permittees to comply with the MRP requirements individually or participate in a group monitoring program. *Id.*, Section B(15). C & M Metals Inc. participates in the Metals and Recyclers Monitoring Group ("MRMG"). As a participant in a group monitoring program, the C & M Owners and/or Operators must collect samples in accordance with the requirements of Section B(5) from two storm events at each outfall at each permitted facility over a five year cycle. *Id.*, Section B(15). Participants in group monitoring are "required to comply with all other

monitoring program and reporting requirements” of Section (B), including the visual observation requirements. *Id.*, Section B(15)(h).

Permittees must collect samples during the first hour of the first storm event of the wet season. Storm Water Permit, Section B(5). Required samples must be collected from all discharge points. *Id.* Storm water samples must be analyzed for total suspended solids (“TSS”), pH, specific conductance, and total organic carbon (“TOC”) or oil and grease. *Id.*, Section B(5)(c). The Facility, as a scrap metal recycling facility classified as SIC Code 5093, must also analyze storm water samples for iron, lead, aluminum, zinc, and chemical oxygen demand, or as required by the Regional Board. *Id.*; *see also id.*, Table D, Sector N. Because information available to Baykeeper discussed in section III.A above indicates that C & M Owners and/or Operators are operating a hazardous waste treatment, storage, or disposal facility under SIC Code 4953, the C & M Owners and/or Operators are further required to analyze storm water samples for several additional pollutants including mercury, selenium, and cadmium. *See* Storm Water Permit, Table D, Sector K.

Baykeeper’s observations of the conditions at the C & M Facility, Baykeeper’s sampling of storm water discharges at the Facility and the Annual Reports submitted by the C & M Owners and/or Operators to the Regional Board, all demonstrate that the C & M Owners and/or Operators have not developed and/or implemented an adequate MRP that meets the requirements of the Storm Water Permit.

1. Failure to Sample Storm Water Discharges As Required by the Storm Water Permit

The C & M Owners and/or Operators have failed to conduct all required sampling. According to C & M Owners and/or Operators’ Annual Reports, the C & M Facility was selected to sample pursuant to the MRMG Plan in the 2008-2009 monitoring period and the 2009-2010 monitoring period. C & M Metals, Inc. 2008-2009 AR at 2; C & M Metals, Inc. 2009-2010 AR at 2.

The C & M Owners and/or Operators, however, did not collect the required storm water discharge samples during the 2008-2009 monitoring season. The explanation provided by the C & M Owners and/or Operators for their failure to sample was that “[t]here were no qualifying storm events (as defined in the General Permit) during the 2008/2009 monitoring season.” C & M Metals, Inc. 2008-2009 AR, Attachment 1: Annual Report Explanations. In January 2011, however, the Regional Board specifically requested that the C & M Owners and/or Operators provide “an explanation of [their] failure to collect samples, analyze and report the data per Section B (7) of the Permit.” Regional Board Request for Information (January 13, 2011). As the Regional Board stated in this letter, the C & M Owners and/or Operators could have collected discharge samples “during the first hour of discharge from the first storm event of the season, and at least one other storm event in the wet season.” *Id.* Information available to Baykeeper, however, indicates that at least six qualifying storm events occurred during the 2008-

2009 monitoring season. *See* Exhibit B.¹⁵ Thus, the C & M Owners and/or Operators' failure to sample during the first qualifying storm event and from at least one of these other qualifying storm events violates Section B(5) and B(15) of the Storm Water Permit.

In the 2009-2010 monitoring season the C & M Owners and/or Operators again failed to sample as required by the Storm Water Permit. While the C & M Owners and/or Operators collected a stormwater sample on February 5, 2010, they failed to sample the first qualifying storm event of the wet season, in violation of Section B(5)(a) of the Permit.¹⁶ The C & M Owners and/or Operators separately violated Section B(5)(a) of the Storm Water Permit by failing to collect the February 5, 2010 sample during the first hour of the storm event. The C & M Owners and/or Operators provided no explanation in the 2009-2010 Annual Report for this failure to sample according to the requirements of Section B(5)(a). Moreover, instead of sampling all four outfalls and drainage areas identified in the Facility SWPPP, as required by Sections B(5)(a) and B(7)(a) of the Permit, the C & M Metals Owners and/or Operators sampled only "Outfall 1." *See* 2009-2010 AR, Summary of Analytical Results for Storm Water Samples. In fact, Baykeeper's observations of the C & M Facility confirm that the Facility regularly discharges from at least two different outfalls. Thus, the C & M Owners and/or Operators' failure to collect samples from all discharge points during sampled storm events violates Section B(7)(a) of the Permit.

In addition, the 2009-2010 AR contained sampling data for only the following constituents: pH, oil and grease, specific conductance, TSS, COD, aluminum, copper, iron, lead and zinc. *Id.* Because information available to Baykeeper indicates that C & M Owners and/or Operators are operating a hazardous waste treatment, storage, or disposal facility under SIC Code 4953, the C & M Owners and/or Operators were also required to analyze storm water samples for several additional pollutants including mercury, selenium, and cadmium. *See* Storm Water Permit, Table D, Sector K. C & M Owners and/or Operators failure to analyze their storm water sample for these constituents is a further violation of the Storm Water Permit's monitoring and reporting requirements.

2. Failure to Conduct Wet Season Visual Observations As Required by the Storm Water Permit

The C & M Owners and/or Operators failed to conduct the required visual observations of storm water discharges from one qualifying storm event per month during the 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011 wet seasons. Thus, the C & M Owners and/or Operators violated Sections B(4) and B(15) of the Storm Water Permit.

¹⁵ Attached as Exhibit B is a table that sets forth qualifying rain events rain events sets forth qualifying rain events that have occurred at the Facility in the past five (5) years. Exhibit B was created using daily and hourly rain data collected from the 716 Los Angeles-Ducommun St. rain gauge by Los Angeles County Department of Public Works.

¹⁶ The February 5, 2010 storm event was the sixth qualifying storm event for the 2009-2010 wet season. *See* Exhibit B.

For example, in the 2006-2007 wet season, the C & M Owners and/or Operators failed to conduct visual observations in March, April and May 2007, stating that no qualifying storm event occurred during these months. 2006-2007 AR. Information available to Baykeeper indicates that at least one qualifying storm event occurred at the Facility during April 2007. *See* Exhibit B.

The C & M Owners and/or Operators also failed to conduct the requisite visual monitoring in the 2007-2008 wet season. Instead, the C & M Owners and/or Operators stated that no qualifying storm event occurred in October, November and December 2007 or in January and May of 2008. 2007-2008 AR. Moreover, the C & M Owners and/or Operators did not submit any records of wet season visual monitoring for the months of February, March and April 2008. *Id.* Information available to Baykeeper, however, indicates that at least one qualifying storm event occurred during the months of November and December 2007 and January and February 2008 in the 2007-2008 wet season. *See* Exhibit B.

In the 2008-2009 AR, the C & M Owners and/or Operators failed to submit a visual observation report for any storm event in the 2008-2009 wet season, asserting that no qualifying storm event occurred during all eight months of that wet season. Information available to Baykeeper indicates that at least one qualifying storm event occurred during the months of December 2008 and January, February and March 2009 of the 2008-2009 wet season. *See* Exhibit B.

C & M Owners and/or Operators' violations of the Storm Water Permit wet season visual monitoring requirements continued during the 2009-2010 wet season. The C & M Owners and/or Operators conducted a wet season visual observation of only one storm event during the entire wet season, which occurred on February 5, 2010. 2009-2010 AR. The C & M Owners and/or Operators February 2010 wet season visual observation, however, failed to comply with requirements of Section B(4)(a) of the Storm Water Permit to record observations during "the first hour of discharge and at all discharge locations." Instead, the wet season visual observation was conducted at 2:35 pm, several hours after the February 5, 2010 storm event started, and recorded observations at only one Facility outfall, stating that "[o]utfalls 2, 3 & 4 have been eliminated & consolidated to one outfall." *Id.*, Form 2 – Record of Wet Season Monitoring (February 5, 2010). However, as explained in Section II, above, Baykeeper investigators have observed storm water discharges from at least two outfalls at the C & M Facility.

Furthermore, the C & M Owners and/or Operators stated that no visual observations were conducted in the period from October – December 2009, and January, March, April and May of 2010, because no qualifying storm events occurred during any of these months. *Id.* Information available to Baykeeper indicates, however, that at least one qualifying storm event occurred during each of the months of October and December 2009 and January, March and April 2010. *See* Exhibit B. Thus, C & M Owners and/or

Operators failed to conduct the wet season visual observations required under the Permit in October and December 2009 and January and April 2010.

In the 2010-2011 wet season, C & M Owners and/or Operators failed to conduct a single wet season visual observation throughout all eight months of the wet season. 2010-2011 AR. Information available to Baykeeper, however, indicates that at least one qualifying storm event occurred during the months of October, November and December 2010 and in February and May 2011 of the 2010-2011 wet season. *See Exhibit B.* Thus, the C & M Owners and/or Operators' failure to conduct any wet season visual observation in the 2010-2011 wet season violates the Permit.

Because the C & M Owners and/or Operators failed to conduct visual observations of storm water discharges as required during the 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011 wet seasons, they also failed to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants during each of these wet seasons, in violation of Section B(4) of the Storm Water Permit.

The C & M Owners and/or Operators have violated the Storm Water Permit and the Clean Water Act by failing to sample and conduct wet season visual observations at the Facility as required. Every day that the C & M Owners and/or Operators operate the Facility with an inadequately developed and/or implemented MRP is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The C & M Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's MRP requirements every day since at least February 1, 2007. These violations are ongoing and the C & M Owners and/or Operators will continue to be in violation every day that it fails to revise, develop, and/or implement an adequate MRP for the Facility. Baykeeper will include additional violations when information becomes available. The C & M Owners and/or Operators are subject to penalties for all violations of the Storm Water Permit and the Clean Water Act occurring since at least March 22, 2007.

F. Failure to Adequately Complete and/or Submit Reports in Violation of the Storm Water Permit

Section B(14) of the Storm Water Permit requires dischargers to submit an Annual Report to the Regional Board by July 1 of each year. The Annual Report must include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the annual comprehensive site compliance evaluation report, an explanation of why a facility did not implement any activities required, and records specified in Section B(13). Storm Water Permit, Section B(14). The Annual Reports submitted by the C & M Owners and/or Operators do not meet the monitoring and reporting requirements of the Storm Water Permit. For example, each Annual Report since 2006-2007 demonstrates that the reporting requirements of Section B of the Permit have not been fulfilled. Thus, the C &

M Owners and/or Operators are in continuous violation of the Storm Water Permit reporting requirements.

In addition, the Storm Water Permit requires a discharger whose discharge exceeds Water Quality Standards to submit a written report identifying what additional BMPs will be implemented to achieve Water Quality Standards. Storm Water Permit, Receiving Water Limitations C(3) and C(4). Despite the extremely high levels of pollutants reported in the storm water discharge samples from the Facility in the 2009-10 Annual Report, the C & M Owners and/or Operators have failed to submit the report required by Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. Accordingly, the C & M Owners and/or Operators are in continuous violation of this requirement of the Storm Water Permit as well.

Every day that the C & M Owners and/or Operators operate the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The C & M Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least March 22, 2007. Baykeeper will include additional violations when information becomes available. These violations are ongoing and the C & M Owners and/or Operators will continue to be in violation every day that they submit inadequate and/or untimely reports to the Regional Board. Baykeeper will include additional violations when information becomes available. The C & M Owners and/or Operators are subject to penalties for all violations of the Storm Water Permit and the Clean Water Act occurring since at least March --, 2007.

G. Penalties for Violations of the Clean Water Act and Relief Baykeeper Seeks

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date upon which Baykeeper serves its notice of intent to file suit. These provisions of law authorize civil penalties for each separate violation of the Clean Water Act occurring between March 15, 2004 and January 12, 2009 of up to \$32,500 per day per violation for all Clean Water Act violations, and \$37,500 for all violations occurring after January 12, 2009.¹⁷ In addition to civil penalties, Baykeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. §§ 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties or substantially prevailing parties to recover costs, including attorneys' fees and experts' fees.

IV. Conclusion

¹⁷ See 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4.

Notice of Violations and Intent to File Clean Water Act Suit

March 22, 2012

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Upon expiration of the 60-day notice period, Baykeeper will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, Baykeeper is willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, Baykeeper will proceed expeditiously with litigation.

Please direct all communications to Santa Monica Baykeeper:

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Sincerely,



Liz Crosson
Santa Monica Baykeeper



Tatiana Gaur
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Days With Significant Rain Events (Rain Fall Above 0.1 inches)
February 2007 - January 2012
(716 Los Angeles-Ducommun St. Rain Gauge)

Date	Rainfall
2/11/2007	0.52
2/22/2007	0.32
2/27/2007	0.12
4/20/2007	0.36
9/21/2007	0.16
9/22/2007	0.2
10/12/2007	0.12
10/13/2007	0.64
11/30/2007	0.68
12/7/2007	0.4
12/18/2007	0.6
12/19/2007	0.48
1/4/2008	1.28
1/5/2008	0.51
1/6/2008	0.56
1/23/2008	0.87
1/24/2008	0.4
1/25/2008	1.07
1/26/2008	0.48
1/27/2008	1.2
1/28/2008	0.2
2/3/2008	0.24
2/14/2008	0.16
2/20/2008	0.12
2/21/2008	0.12
2/22/2008	0.32
2/24/2008	0.32
11/4/2008	0.12
11/25/2008	0.4
11/26/2008	1.18
12/15/2008	1.47
12/17/2008	0.56
12/22/2008	0.16

Days With Significant Rain Events (Rain Fall Above 0.1 inches)
February 2007 - January 2012
(716 Los Angeles-Ducommun St. Rain Gauge)

12/25/2008	0.24
1/23/2009	0.32
2/5/2009	0.56
2/6/2009	0.64
2/7/2009	0.12
2/9/2009	0.32
2/13/2009	0.2
2/16/2009	0.92
2/17/2009	0.32
3/4/2009	0.24
6/5/2009	0.2
10/13/2009	0.28
10/14/2009	1.11
12/7/2009	0.84
12/11/2009	0.64
12/12/2009	0.72
12/13/2009	0.12
12/30/2009	0.12
1/17/2010	0.28
1/18/2010	0.83
1/19/2010	0.51
1/20/2010	1.38
1/21/2010	0.8
1/22/2010	0.36
1/26/2010	0.2
2/5/2010	0.64
2/6/2010	1.6
2/9/2010	0.51
2/27/2010	0.64
3/6/2010	0.48
4/5/2010	0.56
4/11/2010	0.32
4/12/2010	0.51
10/25/2010	0.11

Days With Significant Rain Events (Rain Fall Above 0.1 inches)
February 2007 - January 2012
(716 Los Angeles-Ducommun St. Rain Gauge)

10/30/2010	0.48
11/8/2010	0.19
11/20/2010	0.12
11/21/2010	0.32
11/27/2010	0.15
12/5/2010	0.24
12/17/2010	0.16
12/18/2010	1.14
12/19/2010	2.44
12/20/2010	1.34
12/21/2010	0.9
12/22/2010	1.54
12/25/2010	0.47
12/26/2010	0.35
12/29/2010	0.83
1/2/2011	0.28
1/3/2011	0.15
1/30/2011	0.24
2/16/2011	0.43
2/18/2011	0.4
2/19/2011	0.86
2/25/2011	0.59
2/26/2011	0.4
3/20/2011	1.5
3/21/2011	0.2
3/23/2011	0.35
3/25/2011	0.55
3/27/2011	0.16
5/18/2011	0.2
10/5/2011	1.45
11/4/2011	0.2
11/6/2011	0.31
11/12/2011	0.12
11/20/2011	0.78

Days With Significant Rain Events (Rain Fall Above 0.1 inches)
February 2007 - January 2012
(716 Los Angeles-Ducommun St. Rain Gauge)

12/12/2011	0.67
1/21/2012	0.58
1/23/2012	0.55

Qualifying Rain Events During Business Hours
March 2007 - January 2012
(716 Los Angeles-Ducommun St. Rain Gauge)

Date	Day of Week	Total Rainfall (in inches)
4/20/2007	Friday	0.36
11/30/2007	Friday	0.68
12/7/2007	Friday	0.4
12/18/2007	Tuesday	0.6
1/4/2008	Friday	1.28
1/23/2008	Wednesday	0.87
2/14/2008	Thursday	0.16
2/20/2008	Wednesday	0.12
12/15/2008	Monday	1.47
12/22/2008	Monday	0.16
1/23/2009	Friday	0.32
2/5/2009	Thursday	0.56
2/13/2009	Friday	0.2
3/4/2009	Wednesday	0.24
10/13/2009	Tuesday	0.28
12/7/2009	Monday	0.84
12/11/2009	Friday	0.64
12/30/2009	Wednesday	0.12
1/26/2010	Tuesday	0.2
2/5/2010	Friday	0.64
3/6/2010	Saturday	0.48
4/5/2010	Monday	0.56
10/30/2010	Saturday	0.48
11/20/2010	Saturday	0.12
12/17/2010	Friday	0.16
12/29/2010	Wednesday	0.83
2/16/2011	Wednesday	0.43
5/18/2011	Wednesday	0.2
10/5/2011	Wednesday	1.45
11/4/2011	Friday	0.2
12/12/2011	Monday	0.67
1/21/2012	Saturday	0.58